

## LABOUR DEPARTMENT

The 27th September, 1995

No. 14/13/87-61.ab./576 - In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/S Haryana Refractories Pvt, Ltd, Ballabgarh *versus* Jai Karan

IN THE COURT OF SH. U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,  
FARIDABAD

Ref. No. 49/88.

*between*

THE MANAGEMENT OF M/S HARYANA REFRACTORIES PVT LTD., PLOT NO. 65-66,  
SECTOR-25, BALLABGARH, DISTT. FARIDABAD.

*versus*

THE WORKMAN NAMELY SH. JAI KARAN, C/O SH. SHAM SUNDER GUPTA, 59, NEELAM  
CHOWK, FARIDABAD

*Present :-*

Sh. B.L. Gupta, AR, for the workman.

None for the management.

## AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication, *vide* Haryana Govt. Endst. No. 2149-54, dated 12th January, 1989: -

Whether the services of Jai Karan were terminated or he had left the job by tendering resignation.  
The relief, to which he is entitled as result thereof ?

The case of the workman is that he was employed by the management as an Electrician on 1st November, 1976 against a permanent post. He was drawing Rs. 773 p.m. His work and conduct had always been quite satisfactory. On 19th May, 1988 he was stopped at the gate of the factory without any reason. He was not given any letter in writing. He was not paid retrenchment compensation. On 13th June, 1988 the resignation was obtained from him under threat and duress. He never wanted to submit the resignation but the management succeeded in getting his signatures on the resignation against his wishes. He is thus, entitled to be reinstated in service with full back wages.

3. The management submitted written statement dated 15th March, 1989 stating therein that the services of the workman were never terminated by them. He had voluntarily submitted resignation dated 13th June, 1988 and it was accepted. The acceptance was duly conveyed to him and he was advised to settle his account on 29th June, 1988. Moreover the workman had been absent from duty w.e.f. 19th May, 1988 without any information. The provision of Section 25-F of the Act is not applicable in this case and so he is not entitled to any relief.

4. The workman submitted rejoinder re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed :-

1. Whether the services of Jai Karan were terminated or he had left the job by tendering resignation.  
The relief, to which he is entitled as result thereof ? (As per reference).

6. The management led evidence. Then the workman was allowed to lead evidence. On 13th June, 1944 the case was fixed up for evidence of the workman. Shri S. K. Bakshi authored representative of the management pleaded that he had no further instructions to appear on behalf of the management. It was thus, ordered that the management may be proceeded against *ex parte*. The workman examined himself on oath in *ex parte* evidence.

7. I have heard the authorised representative of the workman and have also gone through the evidence led by both the sides. My findings on the aforesaid issue are as under :—

8. The management has examined only one witness namely Krishan Avtar Verma and he deposed that the workman had been absent since 19th May 1988. The management had sent letter dated 27th May, 1988 Ex. M-1 to him to resume duty through registered post as per postal receipt Ex M-2. The workman had received this letter through postal receipt Ex. M-3. A copy of the said letter was Ex. M-4. Another letter dated 7th June, 1988 Ex. M-5 was also sent to the workman. The workman had written a letter to the union, a copy of which was Ex. M-6. He further stated that the workman had tendered resignation voluntarily dated 13th June, 1988 Ex. M-7. The workman himself had scribed the resignation letter in the presence of Mahesh Kumar. The workman had also appended his signature on the said resignation at point mark A in his presence. The resignation was accepted by the management and letter of acceptance Ex. M-8 was issued to him. The workman had appended his signatures at point mark A on the said letter. In the end, he stated that the workman was informed through letter dated 29th June, 1988 as per details contained in Ex. M-9 to have his full and final dues. He also placed on record the report of the Labour Officer Ex. M-10.3A. On the other hand, the workman deposed that he was stopped at the factory gate on 19th May, 1988. The management had sent a letter Ex. M-1 at his residential address and he had received it through his brother. Then he had asked the management to allow him to resume duty but he was not allowed to do so. He had submitted a letter dated 27th May, 1988 a copy of which was Ex. W-1. He had also sent a letter dated 28th May, 1988 Ex. M-4 to the management but still the management did not allow him to resume duty. He had not received letter dated 7th June, 1988 Ex. M-5. In this regard, he had also filed complaint and also reported the matter to the union and union had written a letter Ex. M 6 to the management. The management had not sent any reply either to him or to the union. On 13th June, 1988 he had met the owner of the company and had requested them to take back him on duty. In that situation, he had been asked to append his signatures on Ex. M-7 but he had refused. Then it was got forcibly written in the presence 2-4 persons. He had not tendered his resignation voluntarily. The management had not remitted the amount due to him. The letter Ex. M-8 was also not sent to him and it was got signed from at that from moment. In the end, he stated that his services had been terminated in an illegal manner and as such he may be reinstated into service with full back wages.

9. On the basis of aforesaid evidence it has been contended on behalf of the workman that it stands proved that the management had stopped him at the factory gate on 19th May, 1988 and had not allowed him to resume duty thereafter despite the fact that he had been visiting the factory regularly. It also stands proved that the workman had reported the matter to the union and the union had also requested the management to allow him to resume duty. This position clearly shows that the management was determined not to take him back on duty. It also stands established that the management got an opportunity on 13th June, 1988 to have resignation from him forcibly when he had visited the factory to make request to allow him to resume duty. It is thus, clear that the workman had not tendered the resignation voluntarily. He is thus, entitled to be reinstated into service with full back wages.

10. There is no dispute that the workman was employed by the management in the year 1976. There is also no dispute that the workman had been working to the satisfaction of the management for a long period of 12 years up to 1988. The workman has not alleged either before the Labour-cum-Conciliation Officer or in the claim statement as to why the management had all of a sudden stopped him at the factory gate on 19th May, 1988. The workman himself admitted that the management had sent a letter dated 27th May, 1988 Ex. W-2 under registered A.D. cover at his residential address informing him that he had been absent from duty without any intimation or leave and absence in such a way amounted to misconduct as per standing orders. The management had also informed him that he should resume duty within two days from the receipt of the letter otherwise his name shall be struck off from the attendance register of the company. The management has placed on record another letter dated 7th June, 1988 Ex. M-5 written to the workman through union that he had made a wrong and baseless report to the union that he was stopped at the factory gate. The management has also placed on record a copy of letter dated 11th June, 1988 Ex. M-6 written by the union to the management in reply to the letter dated 7th June, 1988 Ex. M-5 requesting therein that the workman be allowed to resume duty up to 20th June, 1988 as he had gone to his native town on 6th June, 1988 on getting information about the serious illness of his wife. This position clearly shows that the management had been *bonafide* asking the workman to resume duty by writing letter to the workman direct and through union. In the absence of any allegation from the side of the workman that the management was annoyed with him due to the one reason or the other. It can not be taken that the management had stopped the workman at the factory gate as alleged by him.

11. The workman admitted that he himself had visited the factory on 13th June, 1988 to make a request that he be allowed to resume duty. The resignation Ex. M-7 is written in the hand of the workman. He also admitted that his signatures on the acceptance letter Ex. M-8 were taken from him on the same day. There is nothing on record to show except the statement of the workman himself that he was forced to scribe the resignation letter and sign the acceptance letter. On the other hand, the witness examined by the management categorically stated that the workman had tendered resignation voluntarily. The attending circumstances also lend support to the version of the witness examined by the management. The union had informed the management that the workman had gone to home town on 6th June, 1988 on receipt of information about the serious illness of his wife. It is mentioned in the resignation itself

that the workman was resigning from service as he wanted to go back to home town to attend to his ailing wife. The workman had reported the matter to the union that the management was not allowing him to do the work. It was thus, his duty firstly to contact the union after returning from native village before contacting the management. The workman could take one or the other office bearer of the union with him while going to the management. The workman has neither stated in the claim petition nor in the demand notice that he had made complaint to the union that the management had got the resignation forcibly written from him. The workman served the demand notice after three months from the date of tendering resignation. The workman has not clarified as to why he did not make complaint to the union or served demand notice earlier. It was for the workman to throw light on these aspects of the matter. These circumstances clearly show that the workman had tendered resignation voluntarily.

12. It appears necessary in the interest of justice to add that the workman had tendered resignation on 13th June, 1988 in compelling circumstances to enable him to look after his seriously ailing wife. He had also mentioned in the resignation letter itself that the management should clear his account as soon as possible keeping in view compelling circumstances. The management while accepting the resignation through letter dated 13th June, 1988 Ex.M-8 had indicated that the workman should collect his full and final amount on 29th June, 1988 from the accounts department. It appears that full and final account was prepared on 14th June, 1988 as contained in Ex.M-9 but the amount has not so far been paid or remitted to the workman. It was the bounden duty of the management to remit this amount through money order, or bank draft to the workman if he had not collected the same. It would thus, be desirable to remit this amount with 15% interest to the workman immediately to avoid filing of application by the workman under section 33-C(2) of the Act to recover this amount.

13. For the reasons recorded above, it is held that the management had not terminated the service of the workman and that he had left the service by voluntarily tendering resignation. Consequently, he is not entitled to the relief prayed for by him. The award is passed accordingly.

Dated : 23-8-94

U.B. KHANDUJA,

Presiding Officer,  
Labour Court-II,  
Faridabad.

Endst. No. 2807 dated 31st August, 1994

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to the Government, Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,  
Labour Court-II,  
Faridabad.

No. 14/13/87-6Lab./580.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Nanak Dairy Plant, Hodal, (F. BD) *Versus* Dairy Mazdoor Union.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-II, FARIDABAD.

Reference No. 114/88.

*Between*

THE MANAGEMENT OF M/S NANAK DAIRY PLANT, HODAL, DISTRICT FARIDABAD.

*Versus*

THE WORKMAN NAMELY DAIRY MAZDOOR UNION, G 162, INDRA NAGAR, SECTOR-7, FARIDABAD.

*Present :*

Shri Jawahar Lal AR, for the union.

Shri Satish Kaushik, AR, for the management.

## AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,— vide Haryana Government Endorsement No. 19932—37, dated the 6th May, 1988:—

1. Whether the workman are entitled to enhancement in wages at the rate of Rs. 100 ? If so, to what effect ?
2. Whether the workmen are entitled for uniform ? If so, to what effect ?
3. Whether the workmen are entitled medical allowance ? If so, to what effect ?
4. Whether the workmen are entitled for washing allowance ? If so, to what effect ?
5. Whether the workmen are entitled for bonus at the rate of 20% of the wages for the years, 1984, 1985, and 1986 ? If so, to what amount ?

2. The General Secretary, Dairy Mazdoor Union, G-162, Indra Nagar, Sector-7, Faridabad served a demand notice dated the 3rd August, 1987 on the manager, Nanak Dairy Plant Hodal, the respondent containing 9 demands. The matter was referred to the State Government on failure of the settlement between the union and the management. The Government referred the matter with regard to five demands. The union appeared before the court through authorised representative and made statement that the demand notice be treated as claim statement and so it was treated as such.

3. The management submitted written statement dated the 17th February, 1989 stating there in that the reference is not maintainable as it is not sponsored by any registered or unregistered union of the workmen as required by law. The Dairy Mazdoor Union is neither a registered body nor the requisite number of workmen of the factory are its members. So the General Secretary, Dairy Mazdoor Union had no authority to serve general demand notice. It was next pleaded that the factory was running in loss and as such it could not meet various demands of the workers. The workers were doing their job on automatic machines. There was no chance of spoiling of their clothes in the factory. The management was however providing uniform and shoes etc. to those persons who were posted at such places requiring such type of facility. With regard to the demand for medical allowance, it was stated that it was not possible for the management to meet the same on account of poor financial condition of the company. The demand for washing allowance was opposed on the ground that the workmen were given the liquid soap in the factory for washing hands. With regard to the demand for bonus it was stated that the factory was new a concern ; had not completed its five years term and so the demand could not be accepted.

4. The union submitted rejoinder dated the 4th April, 1989 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

- (1) As per reference.
- (2) Whether the reference has not been properly reported and if so, to what effect ?

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issue No 1 :

8. Two witnesses have been examined by the union. WW-1 Lakhon Pal deposed that the union had served the general demand notice to the management on behalf of the workmen. They had demanded enhancement in wages of Rs. 100 and supply of uniform. They had also made demand for medical allowance as ESI was not applicable. They had demanded washing allowance as their clothes used to get spoiled on account of milk and ghee work. They had also asked for bonus at the rate of 20% for the year, 1984, 1985 and 1986. WW-2 Phop Singh deposed that he had been employed with the Nanak Dairy Plant, with effect from the 1st February, 1983 as plant operator. About 150 workmen used to work in the factory at that time. He further deposed in tune with WW-1 regarding raising of demand for various facilities. On the other hand, the management examined one witness W-1 Nirnanjan Kumar Sharma and he deposed facts as mentioned in the written statement.

9. The union has not given justification for the enhancement of pay of Rs. 100 either in the demand notice or in evidence. Two witness examined by the union have not even stated that the management was earning profit. WW-1 Lakhan Pal admitted in his cross-examination that 50 workmen had left the services of the management and had settled their account. He also admitted that the job of supply of milk was not being done by the management. The job relating to manufacture of the ice was only being done. This position indicates that the management was not having any profit from the business. That being so, the demand for increase in wages cannot be taken to be justified.

10. WW-1 Lakhan Pal admitted in his cross-examination that the company had started giving uniform to the workmen. It shows that the management has already accepted the demand of the workmen. In these circumstances, the demand made by the union with regard to supply of uniform has become infructuous.

10A. The union has claimed medical allowance at the rate of Rs. 100 p.m. for every workman. This demand is based on the ground that ESI was not applicable to them. On the other hand, the plea of the management is that the company had arranged the services of a conductor for providing medical aid to the sick and injured workmen. WW-1 Lakhan Pal admitted the fact that the company had arranged the services of a doctor for giving immediate treatment of the injured workman. He further stated that the workmen did not used to go to the doctor in case of sickness. The arrangement made by the management appears to be sufficient—keeping in view the poor financial condition of the company. That being so, there is no sufficient justification for the grant of medical allowance as claimed by the union.

11. The union has demanded that every workman should be given 30 p.m. as washing allowance. WW-1 Lakhan Pal deposed that they had made demand as their clothes used to get spoiled by the milk and ghee work. On the other hand, MW-1 Niranjan Kumar Sharma deposed that liquid soap and washing soda always used to be available for the use by the workmen. Taking into account this fact and the poor financial condition of the company the demand for washing allowance cannot be considered to be justified.

12. MW-1 Niranjan Kumar Sharma clearly deposed that the factory had started functioning in the year 1982. There is no dispute that the workmen were being paid bonus at the rate of 8.33%. The union has noted any evidence to show that the factory had earned huge profit during the years 1984-85 and 1986 and so they were entitled to claim bonus at the rate of 20% of the wages. This position mentioned above clearly shows that the company has not been earning profit. In this situation the demand of the union for payment of bonus at the rate of 20% of the wages was not justified during the first 5 years of the company.

13. For the reasons recorded above, it is held that the demands made by the union are not justified and as such the workmen are not entitled to any relief. Issue No. 1 is decided in favour of the management and against the union.

Issue No. 2.

14. MW-1 Niranjan Kumar Sharma deposed that there was no union of the workers of the company in the year 1987. On the basis of this statement, it has been contended on behalf of the management that it stands proved that there was no union and so it cannot be said that the reference has been properly espoused. On the other hand, WW-2 Preet Singh deposed that the Dairy Mazdoor Union was registered union as per registration certificate No. Ex. W-2. He further stated that the workers had convened a general meeting before giving demand notice and in that meeting the union was authorised to serve the demand notice. On the basis of this evidence, it has been submitted on behalf of the union that it stands proved that the reference was properly espoused.

15. The perusal of registration certificate dated 28th February, 1989 Ex. W-1 submitted by the union clearly shows that the Dairy Mazdoor Union, Faridabad, was registered on the 28th February, 1989. It is thus, clear that the Dairy Mazdoor Union was not a registered union at the time of service of demand notice on 3rd August, 1987. The union has however, pleaded another document dated 1st August, 1987 Ex. W-2 on the file. It shows that about 75 workmen had convened a general body meeting and had unanimously passed a resolution for giving a general demand notice to the management through union. This fact clearly proves that the Dairy Mazdoor Union existed at the relevant time in the form of an unregistered union. The authorised representative of the management has failed to show any provision in the Act or in the rules framed thereunder that an unregistered union could not serve general demand notice. Keeping in view this position it is held that the reference had been properly espoused. Issue No. 2 is decided against the management and in favour of the union.

16. For the reasons recorded, it is held that the various demands raised by the union were not justified, and as such the union is not entitled to any relief. The award is passed accordingly.

The 18th August, 1994.

U. B. KHANDUJA,

Presiding Officer,

Industrial Tribunal-II, Faridabad.

Endorsement No. 2773, dated the 24th August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,

Industrial Tribunal-II, Faridabad.